

106TH CONGRESS  
1ST SESSION

# H. R. 1283

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1999

Mr. HYDE (for himself, Mr. MORAN of Virginia, Mr. ARMEY, Mr. DeLAY, Mr. SENSENBRENNER, Mr. GEKAS, Mr. BURTON of Indiana, Mr. MANZULLO, Mr. STENHOLM, Mr. HOSTETTLER, Mr. BONILLA, Mr. NORWOOD, Mr. FOLEY, Mr. DEAL of Georgia, Mr. CALVERT, Mr. BRADY of Texas, Mr. WELLER, Mr. CANNON, and Mr. WATTS of Oklahoma) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To establish legal standards and procedures for the fair, prompt, inexpensive, and efficient resolution of personal injury claims arising out of asbestos exposure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fairness in Asbestos Compensation Act of 1999”.

- 1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Findings.

#### TITLE I—ASBESTOS RESOLUTION CORPORATION

- Sec. 101. Establishment.  
 Sec. 102. Powers of the Corporation.  
 Sec. 103. Board of Directors.  
 Sec. 104. Officers.  
 Sec. 105. Medical Advisory Board.  
 Sec. 106. Avoidance of conflict of interest.  
 Sec. 107. Annual reports.

#### TITLE II—MEDICAL ELIGIBILITY DETERMINATIONS

- Sec. 201. Medical criteria—non-malignant conditions.  
 Sec. 202. Medical criteria—mesothelioma.  
 Sec. 203. Medical criteria—lung cancer.  
 Sec. 204. Medical criteria—other cancer.  
 Sec. 205. Procedure for certificate of eligibility.  
 Sec. 206. Exceptional medical claims.  
 Sec. 207. Confidentiality.  
 Sec. 208. Judicial review.

#### TITLE III—ALTERNATIVE DISPUTE RESOLUTION

- Sec. 301. Rules of procedure.  
 Sec. 302. Motions officers.  
 Sec. 303. Notice to respondents.  
 Sec. 304. Grace period.  
 Sec. 305. Mediation.  
 Sec. 306. Arbitration.  
 Sec. 307. Subpoena powers of motions officers and arbitrators.

#### TITLE IV—CIVIL ACTIONS

- Sec. 401. Prerequisites for civil action.  
 Sec. 402. Individual trials.  
 Sec. 403. Certificate of medical eligibility presumed correct.  
 Sec. 404. Penalty for inadequate offer in mediation.

#### TITLE V—RULES APPLICABLE TO ARBITRATION AND CIVIL ACTIONS

- Sec. 501. Elements of proof; relief.  
 Sec. 502. Timeliness defenses abolished.  
 Sec. 503. Attorneys' fees.  
 Sec. 504. Effect on subsequent actions.

#### TITLE VI—FUNDING

- Sec. 601. Costs of medical review and overhead and administration.  
 Sec. 602. Cost of mediation and arbitration.  
 Sec. 603. Informal dispute resolution.

Sec. 604. Judicial review, enforcement.  
 Sec. 605. Penalties.

#### TITLE VII—APPLICABILITY; PENDING CIVIL ACTIONS

Sec. 701. Applicability.  
 Sec. 702. Pending civil actions.

#### TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Definitions.  
 Sec. 802. Applicability of other federal laws.  
 Sec. 803. Obligations of the corporation not obligations of the United States.  
 Sec. 804. Application to existing asbestos trusts.  
 Sec. 805. Applicability to certain settlements.  
 Sec. 806. Severability.

### 1 **SEC. 2. FINDINGS.**

2       The Congress finds that:

3           (1) Asbestos personal injury litigation is unfair  
 4       and inefficient, and imposes a crushing burden on  
 5       litigants and taxpayers alike.

6           (2) Asbestos litigation has already led to the  
 7       bankruptcy of more than 15 companies, representing  
 8       the great majority of the former asbestos industry.

9           (3) The extraordinary volume of asbestos litigation  
 10      tion is straining state and federal courts at enormous  
 11      taxpayer expense, with more than 150,000  
 12      such lawsuits currently pending in the tort system  
 13      and tens of thousands of new cases filed every year.

14          (4) Asbestos litigation has resulted in arbitrary  
 15      verdicts, with individuals receiving widely varying recoveries  
 16      despite similar medical conditions.

1           (5) Asbestos litigation is a mature tort. The  
2       legal, medical, and scientific issues have been repeat-  
3       edly tried and retired in the courts for many years.

4           (6) Currently, statutes of limitations can force  
5       claimants to bring premature lawsuits in order to  
6       avoid losing their claim for compensation. Moreover,  
7       in order to obtain compensation for non-malignant  
8       disease, claimants often must give up their right to  
9       obtain compensation later on, if they develop an as-  
10      bestos-related cancer.

11          (7) Litigation has not been able to provide com-  
12      pensation to claimants swiftly. On the contrary, ac-  
13      cording to the U.S. Judicial Conference's Ad Hoc  
14      Committee on Asbestos Litigation, the volume and  
15      complexity of asbestos cases have resulted in the vio-  
16      lation of a basic tenet of American justice: speedy  
17      and inexpensive resolution of cases.

18          (8) Litigation has also proved to be an extraor-  
19      dinarly costly means of resolving claims of asbestos-  
20      related disease. Less than 50% of the total cost of  
21      asbestos litigation actually goes to compensate  
22      claimants, while the reminder is eaten up in attor-  
23      neys' fees and other litigation costs.

24          (9) In many courts, the vast majority of pend-  
25      ing asbestos claims are filed by individuals who suf-

1       fer no present asbestos-related impairment. These  
2       claims divert the resources of defendant from com-  
3       pensating individuals who are suffering from serious  
4       asbestos-related disease.

5           (10) Punitive damages also divert the resources  
6       of defendants from compensating impaired claim-  
7       ants. Moreover, punitive damages give a few claim-  
8       ants huge windfalls in addition to compensatory  
9       damages.

10          (11) In an effort to cope with the overwhelming  
11       tide of asbestos cases, a few courts have resorted to  
12       mass consolidated trials and other aggregative meth-  
13       ods of dealing with asbestos claims. Unfortunately,  
14       mass consolidations only serve to magnify the irra-  
15       tionality of a litigation system that awards massive  
16       amounts to the unimpaired while threatening the  
17       ability of seriously ill people to obtain compensation  
18       in the future.

## 19                   **TITLE I—ASBESTOS** 20       **RESOLUTION CORPORATION**

### 21   **SEC. 101. ESTABLISHMENT.**

22       There is established a non-profit corporation, to be  
23       known as the “Asbestos Resolution Corporation”.

1 **SEC. 102. POWERS OF THE CORPORATION.**

2 (a) The Corporation shall have all of the powers  
3 granted to non-profit corporations under the District of  
4 Columbia Nonprofit Corporation Act, D.C. Code §§ 29–  
5 501 et seq.

6 (b) In addition to the powers granted under sub-  
7 section (a) the Corporation shall have the power to—

8 (1) hire or appoint employees and to retain the  
9 services of other entities to provide such employees;

10 (2) contract for services, including the services  
11 of physicians and other medical professionals, hear-  
12 ing examiners, mediators, arbitrators, financial ex-  
13 perts or consultants, accountants, and attorneys;

14 (3) receive voluntary contributions of funds,  
15 goods, and services in order to carry out its pur-  
16 poses;

17 (4) appoint one or more exceptional medical  
18 claims panels, as described in section 206(a);

19 (5) adopt rules, policies, and procedures gov-  
20 erning recovery of costs from and allocation of costs  
21 to defendants and respondents;

22 (6) adopt rules, policies, and procedures for the  
23 fair and efficient conduct of medical review and al-  
24 ternative dispute resolution;

25 (7) conduct audits of information submitted to  
26 it, including inspection of laboratories performing

1 medical tests and verification of quality assurance  
2 and quality control procedures; and

3 (8) to sue and be sued in its corporate name.

4 **SEC. 103. BOARD OF DIRECTORS.**

5 (a) MEMBERSHIP.—The Corporation shall be man-  
6 aged by a Board of Directors consisting of 7 members ap-  
7 pointed by the President, by and with the advice and con-  
8 sent of the Senate. The President shall designate the  
9 chairman of the Board. No more than 4 directors may  
10 be members of the same political party. Directors shall  
11 be distinguished private citizens of the United States. The  
12 President shall submit 7 nominations under this section  
13 to the Senate not later than 4 months after the date of  
14 the enactment of this Act.

15 (b) TERMS.—Each director shall be appointed for a  
16 term of 6 years from the expiration of his predecessor's  
17 term, except that, of the directors first appointed—

18 (1) three shall be appointed for a term of 3  
19 years,

20 (2) three shall be appointed for a term of 6  
21 years, and

22 (3) the chairman shall be appointed for a term  
23 of 6 years.

24 The terms of office of the directors first appointed shall  
25 begin on the date of enactment. A director may continue

1 to serve until his successor has been appointed and con-  
2 firmed.

3 (c) VACANCY.—A vacancy on the Board shall be filled  
4 in the same manner as the original appointment. A direc-  
5 tor appointed to fill a vacancy occurring before the expira-  
6 tion of the term for which the member's predecessor was  
7 appointed shall be appointed for the remainder of that  
8 term. A vacancy shall not affect the power of the Board.

9 (d) REMOVAL.—Directors may be removed for cause  
10 by the President.

11 (d) COMPENSATION; EXPENSES.—

12 (1) The compensation of directors other than  
13 the chairman shall not exceed \$50,000 per year, and  
14 the compensation of the chairman shall not exceed  
15 \$75,000 per year.

16 (2) Directors may be reimbursed for reasonable  
17 travel and other expenses incurred in connection  
18 with their services to the Corporation pursuant to  
19 policies adopted by the Board.

20 (f) PERSONAL LIABILITY OF DIRECTORS.—A direc-  
21 tor shall not be personally liable for any act or omission  
22 within the scope of the director's service as a member of  
23 the Board. The liability of a director shall not be limited  
24 as provided in this subsection if the director engaged in



1 willful misconduct or a knowing violation of the criminal  
2 law.

3 (g) AUDIT COMMITTEE.—The Board shall establish  
4 an Audit Committee which shall conduct an annual audit  
5 of the finances of the Corporation and provide an annual  
6 report to the Board regarding the financial condition of  
7 the Corporation.

8 (h) EXCLUSIVE AUTHORITY.—The Board shall have  
9 the exclusive authority to—

10 (1) adopt rules, consistent with this Act, re-  
11 garding the assessment and recovery of costs, the  
12 qualifications of physicians, the organization and op-  
13 eration of the Medical Advisory Board, and the con-  
14 duct of the alternative dispute resolution process;

15 (2) adopt guidelines, upon the recommendation  
16 of the Medical Advisory Board, for implementing the  
17 provisions of this Act regarding exceptional medical  
18 cases;

19 (3) recommend the inclusion of new diseases in  
20 the “other cancer” eligible medical category if it  
21 finds, upon the recommendation of the Medical Ad-  
22 visory Board at a meeting expressly called for that  
23 purpose, that there is a medical consensus that the  
24 disease is caused by exposure to asbestos; and

25 (4) adopt and amend by-laws.

1 (i) TRANSITION.—The Board may take any action  
2 authorized by law as soon as three directors have been  
3 confirmed by the Senate. If these initial directors do not  
4 include the designated chairman, they shall elect a tem-  
5 porary chairman who shall serve until the designated  
6 chairman is confirmed.

7 **SEC. 104. OFFICERS.**

8 The Corporation shall have a chief executive officer  
9 and such other officers as may be named and appointed  
10 by the Board at rates of compensation and terms of serv-  
11 ice fixed by the Board. Officers of the Corporation may  
12 not simultaneously serve on the Board.

13 **SEC. 105. MEDICAL ADVISORY BOARD.**

14 (a) The Board shall appoint a Medical Advisory  
15 Board to provide advice on medical matters, including re-  
16 tention, supervision, and removal of physicians; establish-  
17 ment of guidelines regarding exceptional medical claims;  
18 the appropriateness of adding new diseases to the “other  
19 cancer” eligible medical category; and such other medical  
20 matters as may be referred to the Medical Advisory Board  
21 by the Board.

22 (b) The Medical Advisory Board shall not have fewer  
23 than 5 or more than 9 members. Members of the Medical  
24 Advisory Board shall be physicians with a demonstrated  
25 expertise in asbestos-related conditions. The Medical Advi-

1 sory Board shall include at least one Board-certified pul-  
2 monary specialist, Board-certified radiologist, Board-cer-  
3 tified oncologist, and Board-certified pathologist. The  
4 Board shall adopt such rules and policies regarding the  
5 composition and operation of the Medical Advisory Board  
6 as may be necessary for its efficient operation, including  
7 rules governing appointment and removal of members,  
8 terms of office, filling of vacancies, notice and conduct of  
9 meetings (including quorum requirements) and compensa-  
10 tion.

11 (c) The Medical Advisory Board shall be subject to  
12 the Federal Advisory Committee Act (5 U.S.C. App.).

13 **SEC. 106. AVOIDANCE OF CONFLICT OF INTEREST.**

14 No director, officer, member of the Medical Advisory  
15 Board, employee, contract employee, contractor, or con-  
16 sultant to the Corporation may represent any person in  
17 any manner in any proceeding before the Corporation. In  
18 addition, the Board shall adopt policies and procedures to  
19 guard against both actual and apparent conflicts of inter-  
20 est.

21 **SEC. 107. ANNUAL REPORTS.**

22 The Corporation shall submit an annual report to the  
23 President and Committee on the Judiciary of the House  
24 of Representatives and the Committee on the Judiciary

1 of the Senate with respect to its operations, activities, and  
2 financial condition on or before December 31 of each year.

## 3 **TITLE II—MEDICAL ELIGIBILITY** 4 **DETERMINATIONS**

### 5 **SEC. 201. MEDICAL CRITERIA—NON-MALIGNANT CONDI-** 6 **TIONS.**

7 In order to meet the requirements for the non-malig-  
8 nant conditions eligible medical category, a claimant must  
9 submit medical information and/or testimonial informa-  
10 tion sufficient to demonstrate a latency period of at least  
11 12 years, and (a) clinical evidence of asbestosis, (b) patho-  
12 logical evidence of asbestosis, or (c) evidence of bilateral  
13 pleural thickening with impairment.

### 14 **SEC. 202. MEDICAL CRITERIA—MESOTHELIOMA.**

15 In order to meet the requirements for the mesothe-  
16 lioma eligible medical category, a claimant must submit—

17 (1) a diagnosis of malignant mesothelioma with  
18 a primary site in the pleura or peritoneum, which is  
19 derived from appropriate tissue, and verified using  
20 standardized and accepted criteria of microscopic  
21 morphology and/or a variety of appropriate staining  
22 techniques; and which is made by either (1) two  
23 Board-certified pathologists, or (2) one Board-cer-  
24 tified pathologist who is, at the time that the diag-

1        nosis is verified, a member of the U.S.-Canadian  
2        Mesothelioma Reference Panel; and

3            (2) medical information and/or testimonial in-  
4        formation sufficient to demonstrate a latency period  
5        of at least ten (10) years.

6   **SEC. 203. MEDICAL CRITERIA—LUNG CANCER.**

7        In order to meet the requirements for the lung cancer  
8        eligible medical category, a claimant must submit (a) a  
9        diagnosis by a Board-certified pathologist, Board-certified  
10      pulmonary specialist, or Board-certified oncologist of pri-  
11      mary lung carcinoma; (b) medical information and/or tes-  
12      timonial information sufficient to demonstrate a latency  
13      period of at least twelve (12) years; and (c) either—

14            (1) evidence of non-malignant condition suffi-  
15      cient to meet the requirements of section 201; or

16            (2) chest x-rays which, in the opinion of a cer-  
17      tified B-reader, demonstrate both asbestos-related  
18      bilateral pleural plaques or asbestos-related bilateral  
19      pleural thickening and evidence of 15 years of expo-  
20      sure to asbestos, to be calculated as specified in sub-  
21      paragraphs (A)–(D)—

22            (A) Each year that an exposed person's  
23      primary occupation, during a substantial por-  
24      tion of a normal work year for that occupation,  
25      involved working in areas immediate to where

1 asbestos-containing products were being in-  
2 stalled, repaired, or removed under cir-  
3 cumstances that involved regular airborne emis-  
4 sions of visible asbestos dust, shall count as one  
5 year;

6 (B) Each year that an exposed persons'  
7 primary occupation, during a substantial por-  
8 tion of a normal work year for that occupation,  
9 involved the direct installation, repair, or re-  
10 moval of asbestos-containing products, shall  
11 count as 2 years;

12 (C) Each year that an exposed person's  
13 primary occupation, during a substantial por-  
14 tion of a normal work year for that occupation,  
15 involved the direct manufacture of asbestos-con-  
16 taining products using raw asbestos fiber, or  
17 the direct installation, repair, or removal of as-  
18 bestos-containing products in a shipyard during  
19 World War II, shall count as 4 years.

20 (D) For purposes of calculating years of  
21 exposure under this paragraph, each year of ex-  
22 posure prior to 1976 shall be counted fully;  
23 each year of exposure from 1976 through 1979  
24 shall be counted one-half; and exposures after  
25 1979 shall not be counted, except that—

1 (i) For each year from 1972 through  
2 1975, for which it is demonstrated by a  
3 preponderance of the evidence that the ex-  
4 posed person's exposure to asbestos in his  
5 or her occupation was, during a substantial  
6 portion of that work year, in compliance  
7 with the OSHA 8-hour time-weighted aver-  
8 age airborne concentration for asbestos ex-  
9 posure at that time, then that year shall  
10 count one-half for purposes of calculating  
11 the years of exposure for purposes of this  
12 paragraph:

13 (ii) For each year from 1976 through  
14 1979 for which a claimant demonstrates,  
15 by a preponderance of the evidence, that  
16 the exposed persons' exposure to asbestos  
17 in his or her occupation was, during a sub-  
18 stantial portion of that work year, in ex-  
19 cess of the OSHA 8-hour time-weighted  
20 average airborne concentration for asbestos  
21 exposure at that time, then that year shall  
22 count fully for purposes of calculating the  
23 years of exposure for purpose of this para-  
24 graph; and

1 (iii) For every year after 1979 for  
2 which a claimant demonstrates, by a pre-  
3 ponderance of the evidence, that the ex-  
4 posed person's exposure to asbestos in his  
5 or her occupation was, during a substantial  
6 portion of that work year, in excess of the  
7 OSHA 8-hour time-weighted average air-  
8 borne concentration for asbestos exposure  
9 at that time, then that year shall count  
10 one-half for purposes of calculating years  
11 of exposure for purposes of this paragraph.

12 **SEC. 204. MEDICAL CRITERIA—OTHER CANCER.**

13 In order to meet the requirements in the other cancer  
14 medical eligible category, a claimant must submit (a) a  
15 diagnosis by a Board-certified pathologist, Board-certified  
16 pulmonary specialist, or Board-certified oncologist (as ap-  
17 propriate for the type of cancer claimed) of primary cancer  
18 of the colon or rectum, larynx, esophagus, or stomach; (b)  
19 medical and/or testimonial information sufficient to dem-  
20 onstrate a latency period of at least 12 months; and (c)  
21 evidence of a non-malignant condition sufficient to meet  
22 the requirements of section 201.

23 **SEC. 205. PROCEDURE FOR CERTIFICATE OF ELIGIBILITY.**

24 (a) APPLICATION.—This claimant may apply for a  
25 certificate of medical eligibility by submitting to the Cor-



1 poration such information as the Corporation may require  
2 in a form designated by the Corporation, including:

3 (1) PERSONAL INFORMATION.—The name, ad-  
4 dress, date of birth and death (if applicable), smok-  
5 ing history, occupational history, and social security  
6 number of the exposed person, and the relationship  
7 between the exposed person and the claimant if the  
8 claimant is not the exposed person.

9 (2) EXPOSURE INFORMATION.—The years of  
10 the exposed person's exposure to asbestos or asbes-  
11 tos-containing products; identification of the types of  
12 asbestos or asbestos-containing products to which  
13 the exposed person was exposed; description of the  
14 circumstances, intensity, and duration of the expo-  
15 sure; and identification of the work sites or other  
16 such locations where such exposures occurred.

17 (3) MEDICAL INFORMATION.—The eligible med-  
18 ical category or categories for which the claimant is  
19 applying; all medical diagnoses, reports and records  
20 that relate to any claimed asbestos-related condition;  
21 materials supporting those diagnoses, reports and  
22 records that may be required by the Corporation,  
23 but in any event including all the back-up data for  
24 any pulmonary function tests on which the claimant  
25 relies (including all flow volume loops, spirographs,

1 and any other tracings for any test that is per-  
2 formed); identification of all medical professionals  
3 and medical care facilities involved in diagnosing,  
4 treating, testing, counseling, or consulting with the  
5 exposed person concerning any medical condition  
6 within the last five years. The claimant shall also  
7 provide such medical releases as the Corporation  
8 may require allowing the Corporation to obtain any  
9 and all medical information relevant to the deter-  
10 mination of medical eligibility.

11 (4) EXCEPTIONAL MEDICAL CLAIMS.—The  
12 claimant may concede that the claim cannot meet  
13 the requirements of any eligible medical category  
14 and state that the claimant intends to apply to an  
15 exceptional medical claims panel for designation as  
16 an exceptional medical claim. In that event, the Cor-  
17 poration shall refer the claim to an exceptional med-  
18 ical claim panel and the application will be governed  
19 by the provisions of section 206.

20 (b) NOTIFICATION OF ACCEPTANCE.—The Corpora-  
21 tion shall notify the claimant within 30 days following re-  
22 ceipt of the application either that the application is ac-  
23 cepted for processing or that the application is materially  
24 incomplete and cannot be processed until additional infor-  
25 mation is provided. Any notice that an application is mate-

1 rially incomplete shall describe the missing information.  
2 Issuance of a notice of acceptance shall not preclude the  
3 Corporation from requesting additional information re-  
4 garding a claim if the Corporation subsequently concludes  
5 that such information is necessary to make a decision on  
6 medical eligibility.

7 (c) RECORDS FROM THIRD PERSONS.—The Corpora-  
8 tion may at any time obtain medical, employment, or other  
9 relevant records concerning an exposed person from per-  
10 sons other than the claimant. If it seeks such additional  
11 records, it shall give notice to the claimant, and shall upon  
12 request and at the claimant's expense, furnish copies of  
13 all records obtained to the claimant.

14 (d) ADDITIONAL MEDICAL TESTING.—If the Cor-  
15 poration reasonably believes that it cannot determine, on  
16 the basis of the available medical information, whether an  
17 exposed person meets the medical criteria for one of the  
18 eligible medical categories, the Corporation may at any  
19 time, at its option and expense, require the exposed person  
20 to undergo appropriate, reasonable, and non-invasive med-  
21 ical examination or testing (excluding any sort of com-  
22 puted tomography (CT) scan).

23 (e) TESTIMONIAL INFORMATION UNDER OATH.—All  
24 testimonial information provided to the Corporation in  
25 connection with a claim, other than information in any

1 medical report or records, shall be made under oath, or  
2 by sworn affidavit, or by written declaration subscribed  
3 to as true under penalty of perjury.

4 (f) DETERMINATION OF MEDICAL ELIGIBILITY.—As  
5 soon as practicable and, in any event, no later than 60  
6 days after issuance of a notice of acceptance, the Corpora-  
7 tion shall issue either a certificate of medical eligibility  
8 stating each eligible medical category for which the claim-  
9 ant qualifies or a finding of noneligibility. The Corporation  
10 may extend the time if necessary to secure additional in-  
11 formation that is essential to the determination of medical  
12 eligibility. If the claim is rejected wholly or in part, the  
13 certificate of eligibility or finding of noneligibility shall be  
14 accompanied by a brief written statement of reasons.

15 (g) RECONSIDERATION.—

16 (1) The claimant may seek reconsideration of  
17 the Corporation's determination under subsection (f)  
18 by submitting to the Corporation a written request  
19 for reconsideration within 60 days from the date of  
20 the Corporation's determination under subsection  
21 (f). The Corporation may extend the time for sub-  
22 mitting a request for reconsideration upon the claim-  
23 ant's request. The request for reconsideration shall  
24 include a statement of the grounds for reconsider-

1        ation and shall be accompanied by any additional  
2        evidence on which the claimant relies.

3            (2) The Corporation shall refer a request for re-  
4        consideration to a panel of two physicians with ex-  
5        pertise in the medical issue or issues raised by the  
6        claimant. The panel of physicians may request fur-  
7        ther information from the applicant or from third  
8        parties, or may require additional medical examina-  
9        tion or testing, in accordance with the provisions of  
10       subsections (c) and (d).

11           (3) The panel of physicians shall consider the  
12        issues raised by the request for reconsideration de  
13        novo on the basis of all of the evidence before the  
14        Corporation. If the panel of physicians agrees on the  
15        disposition of the request for reconsideration, it will  
16        render a decision. If the panel is not in agreement,  
17        the Corporation will appoint to the panel a third  
18        physician with expertise in the issues raised by the  
19        claimant, and the panel thus augmented will render  
20        a decision.

21           (4) If the panel approves the request for recon-  
22        sideration, wholly or in part, the Corporation shall  
23        issue a certificate of medical eligibility for the eligi-  
24        ble medical categories for which the panel finds that  
25        the claimant qualifies. If the panel denies the re-

1       quest for reconsideration, or if the certificate of eli-  
2       gibility on reconsideration rejects any claim made by  
3       the claimant, wholly or in part, the panel shall pro-  
4       vide a brief written statement of reasons.

5           (5) The Corporation shall act upon a request  
6       for reconsideration as soon as practicable but in any  
7       event within 30 days: *Provided*, That the Corpora-  
8       tion may extend the time if necessary to secure addi-  
9       tional information that is essential to the disposition  
10      of the request for reconsideration.

11      (h) REAPPLICATION.—A claimant may file a new ap-  
12     plication under this title at any time. Any such new appli-  
13     cation filed within one year following the date on which  
14     the Corporation issued a final finding of noneligibility  
15     shall identify the previous application and any relevant  
16     changes in circumstances.

17     **SEC. 206. EXCEPTIONAL MEDICAL CLAIMS.**

18      (a) EXCEPTIONAL MEDICAL CLAIMS PANEL.—The  
19     Corporation shall establish one or more exceptional med-  
20     ical claims panels. Each exceptional medical claims panel  
21     shall be comprised of five physicians, including two Board-  
22     certified pulmonary specialists, a Board-certified radiolo-  
23     gist (who is either a certified B-reader or a specialist in  
24     computed tomography), and two Board-certified patholo-  
25     gists. Each exceptional medical claims panel shall deter-

1 mine whether claims referred to it meet the requirements  
2 of this section for designation as exceptional medical  
3 claims.

4 (b) TIME TO APPLY.—A claimant may apply to the  
5 Corporation for designation of his claim as an exceptional  
6 medical claim if the claimant—

7 (1) concedes (either before or after a deter-  
8 mination is made under section 205(f)) that the  
9 claim does not meet the medical criteria in sections  
10 201–204; or

11 (2) seeks designation of the claim as an excep-  
12 tional medical claim within 60 days after a deter-  
13 mination on reconsideration under section 205(g)  
14 that the claim does not meet the medical criteria in  
15 sections 201–204, wholly or in part.

16 However, the Corporation shall not accept any application  
17 for designation as an exceptional medical claim if a claim-  
18 ant has filed an action under section 208 for review of  
19 the Corporation’s determination on reconsideration or has  
20 commenced alternative dispute resolution procedures  
21 under title III.

22 (c) CONTENTS OF APPLICATION.—The application  
23 for designation as an exceptional medical claim shall in-  
24 clude the information required by the Corporation under  
25 section 205(a) and shall, in addition, be supported by the

1 report of a Board-certified internist, Board-certified pul-  
2 monary specialist, Board-certified pathologist, or Board-  
3 certified oncologist, as appropriate for the eligible medical  
4 category claimed. The physician's report shall contain a  
5 complete review of the exposed person's medical history  
6 and current condition, such additional material by way of  
7 analysis and documentation as shall be prescribed by the  
8 Corporation, and a detailed explanation why the claim  
9 meets the standard for acceptance as an exceptional med-  
10 ical claim set forth in subsection (d).

11 (d) STANDARD FOR ACCEPTANCE.—The exceptional  
12 medical claims panel shall designate a claim as an excep-  
13 tional medical claim only if the claimant cannot satisfy  
14 the requirements for a given eligible medical category for  
15 reasons beyond his or her control but demonstrates,  
16 through clear and convincing evidence, that the exposed  
17 person has an asbestos-related condition that is substan-  
18 tially comparable to the condition of an exposed person  
19 who would satisfy the requirements of a given eligible  
20 medical category.

21 (e) FURTHER TESTING.—The exceptional medical  
22 claims panel may order additional appropriate, reasonable,  
23 and non-invasive testing or examination of the exposed  
24 person (including computed tomography (CT) scanning).



1 Tests ordered by an exceptional medical claims panel shall  
2 be at the expense of the Corporation.

3 (f) DECISION.—The decision of the exceptional med-  
4 ical claims panel shall not be subject to further review  
5 within the Corporation. If the exceptional medical claims  
6 panel decides that a claim should be designated, wholly  
7 or in part, as an exceptional medical claim, the Corpora-  
8 tion shall issue a certificate of medical eligibility which  
9 shall designate the claim as an exceptional medical claim  
10 and state the eligible medical category or categories for  
11 which the claim qualifies by virtue of that designation.

12 **SEC. 207. CONFIDENTIALITY.**

13 The Corporation shall observe the requirements of 5  
14 U.S.C. § 552a with respect to information that it receives  
15 regarding a claimant or exposed person. The production  
16 of this information to respondents in accordance with sec-  
17 tion 303(c) shall be deemed a routine use of the informa-  
18 tion within the meaning of 5 U.S.C. § 552a(a)(7).

19 **SEC. 208. JUDICIAL REVIEW.**

20 (a) The district courts of the United States shall have  
21 exclusive jurisdiction, without regard to the amount in  
22 controversy or the citizenship of the parties, of any action  
23 to review a determination by the Corporation that a claim-  
24 ant fails to meet the medical criteria, wholly or in part,  
25 or that his claim does not qualify as an exceptional med-

1 ical claim. An adverse determination regarding medical eli-  
2 gibility shall not be subject to review until the claimant  
3 has exhausted administrative remedies before the Corpora-  
4 tion by obtaining a final determination under section  
5 205(g) or section 206(f).

6 (b) An action for review under this section shall be  
7 commenced within 60 days after the determination on re-  
8 consideration as to which review is sought or the decision  
9 that the claimant does not qualify as an exceptional med-  
10 ical claim, whichever is later. However, no action for re-  
11 view under this section may be commenced while an appli-  
12 cation for designation as an exceptional medical claim is  
13 pending.

14 (c) The court shall uphold the determination of the  
15 Corporation if it is supported by substantial evidence on  
16 the record as a whole and is not contrary to law. Due  
17 account shall be taken of the rule of prejudicial error.

18 (d) In applying the standard set forth in subsection  
19 (c), the record shall consist of the information submitted  
20 to the Corporation or the exceptional medical claims panel  
21 by the claimant, records and other information obtained  
22 by the Corporation or exceptional medical claims panel re-  
23 lating to the claim, and the results of any medical tests  
24 administered at the direction of the Corporation or excep-  
25 tional medical claims panel.

## **TITLE III—ALTERNATIVE DISPUTE RESOLUTION**

### **SEC. 301. RULES OF PROCEDURE.**

(a) The Board shall establish rules of procedure for the alternative dispute resolution process. Such rules of procedure shall be designed to ensure that claims will be resolved in a prompt, efficient, fair, and inexpensive way and shall include—

(1) reasonable time limits and rules regarding the time at which actions of the Corporation become final;

(2) procedures relating to the notification of respondents, including reasonable and limited discovery;

(3) procedures for the disclosure of information necessary for settlement, including the timing of disclosure and determination of the information that must be disclosed;

(4) rules regarding protection of confidential information;

(5) procedures for the selection of arbitrators;

(6) arbitration procedures designed to further the objective of prompt, efficient, fair and inexpensive dispute resolution including simplified pleadings, reasonable limitations on discovery, resolution of

1 pre-hearing motions including motions for summary  
2 disposition, appropriate, evidentiary rules, and effi-  
3 cient conduct of hearings; and

4 (7) procedures for just and reasonable sanctions  
5 to ensure compliance with the Corporation's rules  
6 and orders.

7 (b) Parties shall have the right to be represented by  
8 counsel at all phases of the alternative dispute resolution  
9 process.

10 (c) By presenting to the Corporation any statement,  
11 motion, or other paper, counsel and the party represented  
12 by that counsel warrant that to the best of their knowl-  
13 edge, information, and belief, formed after reasonable  
14 inquiry—

15 (1) it is not being presented for any improper  
16 purpose;

17 (2) the claims, defenses, or other legal conten-  
18 tions therein are warranted by existing law or by a  
19 nonfrivolous argument for the extension, modifica-  
20 tion, or reversal of existing law or the establishment  
21 of new law;

22 (3) the allegations and other factual contentions  
23 have evidentiary support; and

24 (4) the denials of factual contentions are war-  
25 ranted on the evidence.

1 (d) The Corporation may contract with providers of  
2 alternative dispute resolution services to provide mediation  
3 or arbitration under this part. To the extent appropriate  
4 and consistent with this Act, the Board may adopt the  
5 rules of procedure of such contract service providers.

6 **SEC. 302. MOTIONS OFFICERS.**

7 Upon issuance of a certificate of eligibility, the Cor-  
8 poration shall assign a motions officer to the claim. The  
9 motions officer shall have the authority to determine all  
10 procedural issues in the alternative dispute resolution  
11 process except such matters as may be within the author-  
12 ity of a mediator or arbitrator assigned to the claim. With-  
13 out limitation, the motions officer may—

14 (1) determine whether notice shall be provided  
15 to any respondent under section 303,

16 (2) issue subpoenas to parties and non-parties  
17 for testimony and documents, in accordance with the  
18 terms of section 307,

19 (3) enter scheduling orders and other orders to  
20 control the progress of the proceedings,

21 (4) resolve discovery disputes, and

22 (5) exercise any other authority conferred by  
23 procedural rules, policies, or procedures established  
24 by the Corporation.

1 **SEC. 303. NOTICE TO RESPONDENTS.**

2 (a) Within such time after receiving a final certificate  
3 of eligibility as the Corporation may provide, a claimant  
4 shall provide to the Corporation the name and address of  
5 each person that claimant alleges is responsible for his as-  
6bestos-related injury and for each such person a verified  
7 particularized statement in a form prescribed by the Cor-  
8poration of the basis for the allegation that that person  
9 is or may be responsible for his injury. This particularized  
10 statement shall include as applicable the dates of exposure  
11 for each relevant time period; the worksite or other place  
12 of exposure; the nature and frequency of the exposure; if  
13 the exposure was occupational, the name of the exposed  
14 person's employer and a description of the exposed per-  
15son's job and working conditions; the asbestos-containing  
16 product(s) or material(s) to which the claimant was ex-  
17posed at each place of exposure; and any other information  
18 that the Corporation may require by rule or otherwise in  
19 all or in particular classes of cases.

20 (b) The Corporation will promptly notify each person  
21 identified by the claimant pursuant to subsection (a) of  
22 this section, and for whom a complete and adequate par-  
23 ticularized statement has been submitted, that it has been  
24 named as a respondent. The Corporation will at the same  
25 time provide to each respondent a copy of all particular-

1 ized statements submitted to the Corporation under sub-  
2 section (a).

3       (c) The Corporation shall provide to each respondent,  
4 on request and at the respondent's expense, a copy of all  
5 information submitted to the Corporation by the claimant,  
6 records and other information obtained by Corporation re-  
7 lating to the claim and the results of any medical tests  
8 administered at the Corporation's direction. However, the  
9 Corporation shall not provide the information described in  
10 this subsection to the respondent until it has received a  
11 protective order, signed by or on behalf of the respondent,  
12 in a form prescribed by the Corporation, that will preserve  
13 the confidentiality of medical, employment, and other in-  
14 formation that the Corporation reasonably designates as  
15 confidential.

16       (d) For good cause shown and subject to reasonable  
17 limitations, a motions officer may allow discovery for the  
18 purpose of obtaining information necessary to allow the  
19 claimant to provide a particularized statement under sub-  
20 section (a). The motions officer may grant reasonable ex-  
21 tensions of time for naming respondents in order to allow  
22 for the completion of discovery under this subsection.

23       (e) New respondents may be added in mediation after  
24 the time prescribed by the Corporation for adding re-  
25 spondents (including any extensions) only upon motion by

1 a claimant for good cause. Among the factors that the  
2 Corporation may consider in determining whether good  
3 cause exists are the following: (1) the prejudice to the  
4 claimant if the new respondent is not added, (2) the rea-  
5 son why the new respondent was not named in a timely  
6 way, (3) whether the claimant sought to name the new  
7 respondent as soon as he was aware of the omission, (4)  
8 the extent to which late addition of a new respondent  
9 would be disruptive, and (5) other relevant factors.

10 **SEC. 304. GRACE PERIOD.**

11 The Corporation shall establish a grace period not to  
12 exceed 60 days after expiration of the time for naming  
13 respondents, during which the parties will be encouraged  
14 to reach voluntary settlements without the need for medi-  
15 ation.

16 **SEC. 305. MEDIATION.**

17 (a) APPOINTMENT OF MEDIATOR.—Upon expiration  
18 of the grace period, the Corporation shall appoint a medi-  
19 ator to assist the parties who have not settled in the grace  
20 period in settling the claim.

21 (b) DISCLOSURE OF INFORMATION NECESSARY FOR  
22 SETTLEMENT.—Within such time after appointment of a  
23 mediator as the Corporation shall prescribe, each party  
24 shall serve upon all other non-settling parties a statement  
25 of information required for settlement. The information



1 to be included in such statements shall be determined by  
2 the Corporation to be reasonably necessary for the parties  
3 to evaluate the claim. Information previously provided by  
4 any party may be incorporated by reference and need not  
5 be resubmitted. Nothing in this subsection shall be con-  
6 strued to require the disclosure of any information privi-  
7 leged under applicable law.

8 (c) TIME LIMITS.—Mediation shall be completed  
9 within 60 days following the appointment of the mediator.  
10 The time period may be extended by the mediator if the  
11 claimant has failed to provide the information required  
12 under subsection (b), if such extension is necessary to  
13 allow for simultaneous mediation of a group of claims, or  
14 for other good cause. The time period may also be ex-  
15 tended for a period not to exceed 60 days if in the judg-  
16 ment of the mediator, the claimant's final demand under  
17 subsection (e) is not made in good faith, given the legal  
18 and factual basis of the claim.

19 (d) CONFIDENTIALITY.—All statements made by any  
20 party in mediation shall be confidential and shall not be  
21 admissible in any trial or arbitration except as allowed  
22 under Rule 408 of the Federal Rules of Evidence.

23 (e) GOOD FAITH OFFERS AND DEMANDS.—Fifteen  
24 days prior to the close of the mediation period, claimant  
25 shall provide to each non-settling respondent or jointly-

1 represented group of respondents a final good faith de-  
2 mand of settlement. Five days later each respondent or  
3 jointly-represented group of respondents shall make a final  
4 good faith offer in reply. If a respondent or jointly-rep-  
5 resented group of respondents fails to make a settlement  
6 offer under this section, it shall be deemed to have made  
7 a settlement offer of zero dollars. During the remaining  
8 10-day period, or any extension thereof, the mediator shall  
9 work with the parties in a further effort to settle the claim.

10 (f) RELEASE FROM MEDIATION.—At the close of the  
11 mediation period, the mediator shall issue to the claimant  
12 a release from mediation with respect to all respondents  
13 that participated in mediation. After the issuance of a re-  
14 lease from mediation, the claimant may elect arbitration  
15 under section 306 or commence a civil action against those  
16 respondents.

17 **SEC. 306. ARBITRATION.**

18 (a) ELECTION TO ARBITRATE.—A claimant may  
19 elect arbitration under this section by serving notice of  
20 such election within 30 days following release from medi-  
21 ation on all respondents that have not previously settled.  
22 All such respondents will be parties to the arbitration. The  
23 Corporation shall adopt rules of procedure under section  
24 301 governing the assertion of third-party claims against  
25 any person, whether or not that person has previously

1 been named as a respondent. Except as otherwise provided  
2 in this section, parties in arbitration against which third-  
3 party claims have been asserted shall be deemed respond-  
4 ents.

5 (b) FEDERAL ARBITRATION ACT.—All arbitrations  
6 hereunder shall be subject to the Federal Arbitration Act,  
7 9 U.S.C. §§ 1–6, 8–16, except that, the provisions of this  
8 Act and rules adopted by the Corporation under this Act  
9 shall be effective notwithstanding any inconsistent provi-  
10 sion of the Federal Arbitration Act.

11 (c) ARBITRATION BY SPECIAL AGREEMENT.—Noth-  
12 ing in this section shall be construed as prohibiting con-  
13 sensual arbitration pursuant to a special agreement en-  
14 tered into by the claimant and one or more of the respond-  
15 ents. The terms of such a special agreement will prevail,  
16 as to the parties thereto, over the provisions of this section  
17 (other than subsection (h)) and any rules adopted pursu-  
18 ant to section 301.

19 (d) STATUTORY ARBITRATION.—In the absence of a  
20 special agreement to arbitrate, arbitrations shall be con-  
21 ducted under rules adopted by the Corporation pursuant  
22 to section 301. Those rules shall establish a procedure for  
23 early dismissal of, or summary judgment in favor of, any  
24 party named as a third-party respondent, and no party

1 that obtains such early dismissal summary judgment shall  
2 be considered a respondent for purposes of section 601.

3 (e) SUBPOENA POWERS OF ARBITRATORS.—Arbitra-  
4 tors may issue subpoenas to parties and non-parties for  
5 testimony and documents in accordance with the terms of  
6 section 307.

7 (f) LAW TO BE APPLIED.—Unless otherwise pro-  
8 vided in this Act, the arbitrator shall, with respect to each  
9 respondent, apply the law, including the law relating to  
10 choice of law, that would be applied by a court designated  
11 by the claimant which would have jurisdiction over that  
12 respondent. However, if a respondent demonstrates to the  
13 satisfaction of the arbitrator that the court designated by  
14 the claimant would dismiss or transfer under forum non  
15 conveniens or a similar doctrine, then the arbitrator shall  
16 apply the law of the state which has the most significant  
17 relationship to the occurrence and the parties.

18 (g) PRESUMPTION APPLICABLE TO MEDICAL DETER-  
19 MINATION.—A finding of medical eligibility by the Cor-  
20 poration shall be presumed correct and shall be conclusive  
21 unless rebutted by clear and convincing evidence, except  
22 that, to the extent that the finding of medical eligibility  
23 is abased upon evidence of exposure to asbestos, proof  
24 with respect to such exposure shall be determined in ac-  
25 cordance with applicable state law.

1       (h) AWARDS.—The arbitrator shall issue awards with  
2   respect to each respondent within time periods set by the  
3   Corporation. The awards shall be accompanied by findings  
4   of fact and conclusions of law. Each respondent shall be  
5   jointly and severally liable to the claimant to the extent  
6   provided by applicable state law:

7           (1) Where joint and several liability exists  
8       under applicable state law, the arbitrator shall deter-  
9       mine the total joint and several liability of all re-  
10      spondents that have not been released by the claim-  
11      ant or dismissed from the proceeding. The arbitrator  
12      shall, in addition, determine the amount allocable to  
13      each such respondent based on principles of com-  
14      parative fault or responsibility. Any respondent who  
15      has obtained a release from the claimant prior to the  
16      issuance of the arbitrator's award shall be fully pro-  
17      tected from claims for contribution or indemnity; but  
18      the award against the remaining respondents shall  
19      be reduced by the consideration paid or the amount  
20      stated in the release, whichever is greater. The total  
21      award, reduced by the aggregate of such reductions  
22      for all respondents receiving a release, shall then be  
23      allocated among the remaining respondents accord-  
24      ing to the arbitrator's allocation of comparative  
25      shares of fault or responsibility.

1           (2) Where joint and several liability has been  
2           abolished under applicable stat law, the arbitrator  
3           shall determine in accordance with that law the sev-  
4           eral share of liability of each respondent that has  
5           not been released or dismissed from the proceeding.

6           (3) Where joint and several liability has been  
7           abolished under applicable state law with respect to  
8           only a portion of damages, the arbitrator shall deter-  
9           mine in accordance with state law the several share  
10          of liability of each respondent that has not been re-  
11          leased or dismissed from the proceeding, and shall  
12          in addition determine in accordance with state law  
13          the total joint and several liability of all such re-  
14          spondents. Allocation of the joint and several portion  
15          of the ward among the respondents, and reduction  
16          of the total award on account of settlements, shall  
17          be as set forth in paragraph (h)(1), except that only  
18          the joint and several portion of an award may be  
19          reduced by amounts paid in settlement by released  
20          persons and only the portion of the amount paid by  
21          any released person in settlement with respect to the  
22          joint and several portion of damages shall be so ap-  
23          plied to reduce the award.

24          (i) CONTRIBUTION RIGHTS RETAINED BY RESPOND-  
25          ENTS IN ADR.—The entry of an arbitration award

1 against any respondent shall give rise to a right of con-  
2 tribution on the part of that respondent against any joint  
3 tortfeasor whose liability is extinguished by the award  
4 without the necessity that the award be enforced as a  
5 court judgment. A settlement between a respondent and  
6 the claimant that extinguishes in whole or in part the li-  
7 ability of a joint tortfeasor shall not extinguish the settling  
8 respondent's right of contribution against that joint  
9 tortfeasor.

10 (j) PENALTY FOR INADEQUATE OFFER IN MEDI-  
11 ATION.—If the final offer made by any respondent or  
12 jointly-represented group of respondents under section  
13 305(e) is more than 25 percent less than the share of the  
14 total liability (exclusive of prejudgment interest, if any)  
15 awarded in arbitration against that respondent or against  
16 all the members of a jointly-represented group of respon-  
17 dents, the arbitrator shall add a 10% penalty to the award  
18 against such respondent or each member of such group  
19 of respondents. This penalty shall not be taken into con-  
20 sideration in determining the maximum allowable attor-  
21 neys' fees under section 503.

22 (k) CONSOLIDATIONS.—Claims with respect to mul-  
23 tiple exposed persons shall not be joined or consolidated  
24 for hearing on the merits without the consent of all par-  
25 ties.

1 **SEC. 307. SUBPOENA POWERS OF MOTIONS OFFICERS AND**  
2 **ARBITRATORS.**

3 A motions officer or an arbitrator may summon in  
4 writing any person to attend before him as a witness, or  
5 to appear for a deposition, and in a proper case to bring  
6 with him any book, record, document, or paper which may  
7 be deemed material as evidence in the case. The fees for  
8 such attendance shall be the same as the fees of witnesses  
9 before masters of the United States courts. A summons  
10 under this section shall issue in the name of the motions  
11 officer or arbitrator, shall be signed by the motions officer  
12 or arbitrator, shall be directed to the person summoned,  
13 and shall be served in accordance with Rule 45(b)(1) of  
14 the Federal Rules of Civil Procedure. If any person so  
15 summoned to testify or produce documents shall refuse or  
16 neglect to obey said summons, upon petition the United  
17 States District Court for the District of Columbia or for  
18 the district in which the testimony is to be taken or the  
19 document production is to take place may compel the at-  
20 tendance of such person before the motions officer or arbi-  
21 trator, or his appearance for a deposition, or the produc-  
22 tion of documents, or may punish said person for con-  
23 tempt in the same manner provided by law for securing  
24 the attendance of witnesses or their punishment for ne-  
25 glect or refusal to attend in the courts of the United  
26 States.



## 1           **TITLE IV—CIVIL ACTIONS**

### 2   **SEC. 401. PREREQUISITES FOR CIVIL ACTION.**

3           Subject to section 702, no civil action asserting any  
4   asbestos claim may be filed or maintained unless the plain-  
5   tiff has obtained a certificate of medical eligibility and re-  
6   lease from mediation.

### 7   **SEC. 402. INDIVIDUAL TRIALS.**

8           No class action suit, joinder of parties, aggregation  
9   of claims, consolidation of actions, extrapolation, or other  
10   device to determine multiple asbestos claims on a collective  
11   basis shall be permitted without the consent of each de-  
12   fendant. Any defendant in a civil action that involves a  
13   violation of this subsection may remove such action to an  
14   appropriate Federal district court. The district courts of  
15   the United States shall have jurisdiction of all civil actions  
16   removed pursuant to this section without regard to diver-  
17   sity of citizenship or amount in controversy.

### 18   **SEC. 403. CERTIFICATE OF MEDICAL ELIGIBILITY PRE-** 19                   **SUMED CORRECT.**

20           A finding of medical eligibility by the Corporation  
21   shall be presumed correct and shall be conclusive unless  
22   rebutted by clear and convincing evidence, except that, to  
23   the extent that a finding of medical eligibility is based on  
24   evidence of exposure to asbestos, the burden of proof with

1 respect to such exposure shall be determined in accordance  
2 with applicable state law.

3 **SEC. 404. PENALTY FOR INADEQUATE OFFER IN MEDI-**  
4 **ATION.**

5 If the final offer made by any respondent or jointly-  
6 represented group of respondents under section 305(e) is  
7 more than 25 percent less than the several share of liabil-  
8 ity (exclusive of prejudgment interest, if any) assigned by  
9 the jury or other fact-finder to that respondent or to all  
10 the members of a jointly represented group of respond-  
11 ents, the court shall award a 10% penalty as to each such  
12 respondent or member of a jointly-represented group of  
13 respondents. This penalty shall not be taken into consider-  
14 ation in determining the maximum allowable attorneys'  
15 fees under section 503.

16 **TITLE V—RULES APPLICABLE**  
17 **TO ARBITRATIONS AND CIVIL**  
18 **ACTIONS**

19 **SEC. 501. ELEMENTS OF PROOF; RELIEF.**

20 Subject to section 702 and notwithstanding any other  
21 provision of law, the following shall apply in all civil ac-  
22 tions and arbitrations involving an asbestos claim:

23 (1) BASIC REQUIREMENT OF ELIGIBLE MED-  
24 ICAL CONDITION.—No person shall recover in any  
25 civil action or arbitration damages or other relief

1 with respect to an asbestos claim unless such person  
2 establishes, by evidence meeting the requirements of  
3 sections 201, 202, 203, 204, or 206, as appropriate,  
4 the existence of an eligible medical condition.

5 (2) EMOTIONAL DISTRESS; MEDICAL MONI-  
6 TORING.—No damages or other relief shall be  
7 awarded in any civil action or arbitration involving  
8 an asbestos claim for emotional distress or any other  
9 form of mental or emotional harm, or for medical  
10 monitoring or surveillance, based wholly or in part  
11 on exposure to asbestos unless the requirements of  
12 paragraph (1) are met in addition to any other re-  
13 quirement under applicable law for recovery of dam-  
14 ages or other relief for emotional distress or medical  
15 monitoring or surveillance.

16 (3) ENHANCED RISK.—No damages or other re-  
17 lief shall be awarded in any civil action or arbitra-  
18 tion involving an asbestos claim solely for increased  
19 risk of cancer or other disease.

20 (4) PUNITIVE DAMAGES.—No punitive damages  
21 shall be awarded in any civil action or arbitration in-  
22 volving an asbestos claim.

23 **SEC. 502. TIMELINESS DEFENSES ABOLISHED.**

24 No defense to an asbestos claim based on a statute  
25 of limitations or statute of repose, laches, or any other

1 defense based on the timeliness of the claim shall be recog-  
2 nized or allowed in any civil action or arbitration unless  
3 such claim was untimely as of the date of enactment of  
4 this Act.

5 **SEC. 503. ATTORNEYS' FEES.**

6 Notwithstanding any provision of other law or con-  
7 tract, the aggregate fee, including all expenses and other  
8 charges of a claimant's attorneys in any civil action or pro-  
9 ceeding before the Corporation involving an asbestos claim  
10 (whether or not such attorney formally appears in such  
11 civil action or proceeding) shall not exceed twenty-five per-  
12 cent of the damages or other payments received by that  
13 claimant, in settlement or pursuant to a judgment or  
14 award, from or on behalf of all respondents before the Cor-  
15 poration and all defendants in the civil action. This limita-  
16 tion does not apply to any settlement between a claimant  
17 and any other person regarding an asbestos claim reached  
18 prior to the mediation period and where no civil action  
19 has been commenced in any court.

20 **SEC. 504. EFFECTIVE ON SUBSEQUENT ACTIONS.**

21 (a) Notwithstanding any other provision of law, a  
22 judgment or settlement of an asbestos claim for a non-  
23 malignant condition satisfying the requirements of section  
24 201 shall not preclude a subsequent claim with respect  
25 to the same exposed person for a malignant condition sat-

1 isfying the requirements of sections 202, 203, 204, or 206,  
 2 as applicable.

3 (b) Subsection (a) shall not be construed to invalidate  
 4 any provision of a settlement agreement entered into prior  
 5 to the date of enactment.

## 6 **TITLE VI—FUNDING**

### 7 **SEC. 601. COSTS OF MEDICAL REVIEW AND OVERHEAD AND** 8 **ADMINISTRATION.**

9 (a) PROVISIONAL ALLOCATION.—

10 (1) ESTIMATE OF COSTS.—On or before August  
 11 1 of each year, the Corporation shall estimate its  
 12 costs (exclusive of the cost of mediation and arbitra-  
 13 tion that may be recovered under section 602) for  
 14 the following fiscal year beginning October 1. In es-  
 15 timating its costs under this section, the Corporation  
 16 shall make reasonable allowances for contingencies  
 17 and shall state separately those costs directly related  
 18 to medical review and those costs directly related to  
 19 general overhead and overhead and administration  
 20 of the Corporation.

21 (2) ALLOCATION TO RESPONDENTS.—The Cor-  
 22 poration shall proportionally allocate the costs esti-  
 23 mated pursuant to paragraph (1) among all persons  
 24 named as a respondent during the 12-month period  
 25 ending the preceding June 30 and shall notify each

1       such person of the amount due pursuant to such al-  
2       location. In this section, a person shall be considered  
3       named as a respondent if notice was provided to  
4       such person under section 303. In making this allo-  
5       cation, the Corporation shall calculate the following:  
6       (i) for each individual respondent, the total number  
7       of proceedings in which the respondent has been  
8       named, and (ii) the total combined number of pro-  
9       ceedings for all respondents. For purposes of this  
10      calculation, all claims, including derivative claims,  
11      relating to one exposed person shall be counted as  
12      one proceeding for each respondent named in the  
13      proceeding. The total number of proceedings for  
14      each respondent shall be divided by the total com-  
15      bined number of proceedings for all respondents to  
16      determine the percentage of costs allocable to each  
17      individual respondent. The Corporation shall not al-  
18      locate any of the costs estimated pursuant to para-  
19      graph (1) to any respondent whose allocable share  
20      of the costs, in the absence of such exclusion, is less  
21      than a de minimis percentage established by the  
22      Corporation. Any such unallocated percentage(s)  
23      shall be reallocated to the remaining respondents  
24      based upon their original allocation percentages.

1           (3) PAYMENT OF ESTIMATED SHARE OF  
2           COSTS.—Each respondent shall pay to the Corpora-  
3           tion its allocated share of the estimated costs within  
4           30 days after the date of notification of its allocated  
5           share.

6           (b) FINAL ALLOCATION.—On or before November 30  
7           of each year, the Corporation shall determine its total  
8           costs (exclusive of the cost of mediation and arbitration  
9           that may be recovered from respondents under section  
10          602) for the prior fiscal year ending September 30 and  
11          will allocate those costs proportionally, in the manner de-  
12          scribed in subsection (a)(2), among persons who were  
13          named as respondents in that fiscal year. In making an  
14          allocation under this subsection, the Corporation shall  
15          state separately those costs directly attributable to the  
16          medical review process and those costs directly attrib-  
17          utable to general overhead and administration of the Cor-  
18          poration. If the amount allocated to any person under this  
19          subsection is greater than the amount deposited by such  
20          person under subsection (a)(2) with respect to the pre-  
21          ceding fiscal year, that person shall pay the deficiency to  
22          the Corporation within 30 days after receiving a notice  
23          of deficiency from the Corporation. If the amount allo-  
24          cated to any person under this subsection is less than the  
25          amount deposited by such person under subsection (a)(2)

1 for the preceding fiscal year, the Corporation shall  
2 promptly refund the difference to that respondent.

3 (c) TRANSITIONAL PROVISIONS.—

4 (1) START-UP FUNDING.—Start-up funding will  
5 be provided by voluntary contributions within 30  
6 days after appointment and confirmation of the first  
7 director. Unless the Corporation and the donor oth-  
8 erwise agree, the Corporation will refund such con-  
9 tributions following receipt of the funds allocated  
10 pursuant to the initial determination of costs and as-  
11 sessments to defendants provided in subsection  
12 (c)(2). Start-up costs include all reasonable and nec-  
13 essary expenses of the Corporation incurred prior to  
14 the availability of transitional funding under sub-  
15 section (c)(2).

16 (2) TRANSITIONAL FUNDING.—

17 (A) NOTICE.—As soon as feasible after a  
18 majority of the Board is appointed and con-  
19 firmed, the Board shall provide notice request-  
20 ing the information listed in subparagraph (B)  
21 to each defendant served in any civil action in-  
22 volving an asbestos claim pending on the date  
23 of enactment. Such notice shall be the best  
24 practicable under the circumstances, including  
25 publication in the Federal Register and indi-



vidual notice to any defendant that can be identified through reasonable effort.

(B) INFORMATION TO BE PROVIDED.—

Within such time as the Corporation may prescribe, but in any event not less than 60 days after the date of publication in the Federal Register, every person who was, on the date of enactment, served as a defendant in at least 5000 pending civil actions involving asbestos claims shall provide to the Corporation a statement containing the following information: the total number of civil actions in which that person was named as a defendant and, with respect to each civil action, the name of the lead plaintiff, the name of the lead defendant, the court in which the civil action was pending, and the docket number.

(C) COUNTING RULES.—For purposes of subparagraph (B):

(i) All asbestos claims relating to a single exposed person, including derivative claims, shall be treated as one civil action regardless of the number of plaintiffs or defendants names in the complaint.

1 (ii) In civil actions involving multiple  
2 plaintiffs and defendants, each asbestos  
3 claim shall be deemed to have been as-  
4 serted against each defendant unless the  
5 complaint states otherwise.

6 (iii) Third-party defendants shall cal-  
7 culate the number of civil actions involving  
8 asbestos claims pending against them as if  
9 they had been joined as a defendant by the  
10 original plaintiff or plaintiffs.

11 (iv) Cross claims, deemed or other-  
12 wise, shall not count as a separate civil ac-  
13 tion.

14 (D) SIGNATURE.—The statement of infor-  
15 mation required under this paragraph shall be  
16 signed on behalf of the defendant by a cor-  
17 porate officer or (in the case of a defendant  
18 that is not a corporation) a senior official com-  
19 parable to a corporate officer, authorized to  
20 bind such defendant, attesting under penalty of  
21 perjury that the information contained therein  
22 is true and complete to the best of his knowl-  
23 edge and belief after reasonable investigation.

24 (E) ALLOCATION AND PAYMENT.—The  
25 Corporation shall proportionally allocate its es-

1           timated costs for transitional period to include  
2           the first two fiscal years after the date of enact-  
3           ment, in substantially the same manner as the  
4           allocation described in subsection (a)(2), to the  
5           defendants identified in this paragraph and  
6           shall notify each such defendant of its propor-  
7           tionate share of such estimated transitional  
8           costs. Within 45 days following the date of such  
9           notice, each such defendant shall pay its share  
10          of the estimated transitional costs to the Cor-  
11          poration.

12          (3) RECONCILIATION.—On or before November  
13          30 following the end of the transitional period, the  
14          Corporation shall determine its total costs (exclusive  
15          of the cost of mediation an arbitration that may be  
16          recovered from respondents under section 602) for  
17          the transitional period, including start-up costs, and  
18          shall proportionally allocate those costs, in substan-  
19          tially the same manner as the allocation described in  
20          subsection (a)(2), among defendants who were  
21          named as respondents during that transitional pe-  
22          riod. In making an allocation under this subsection,  
23          the Corporation shall state separately those costs di-  
24          rectly attributable to the medical review process and  
25          those costs directly attributable to general overhead

1       and administration of the Corporation. If the  
2       amount allocated to any respondent under this sub-  
3       section is greater than the amount deposited by such  
4       respondent under paragraph (2), that respondent  
5       shall pay the deficiency to the Corporation within  
6       30 days after receiving a notice of deficiency from  
7       the Corporation. If the amount allocated to any re-  
8       spondent under this subsection is less than the  
9       amount deposited by such respondent under para-  
10      graph (2), the difference shall be promptly refunded.

11   **SEC. 602. COST OF MEDIATION AND ARBITRATION.**

12       (a) The cost of mediation shall be charged, on a per  
13      capita basis, to each respondent who participated in medi-  
14      ation, wholly or in part.

15       (b) In the absence of an agreement among the parties  
16      to the contrary, the cost of arbitration shall be charged,  
17      on a per capita basis, to each respondent who participated  
18      in the arbitration, wholly or in part, except that, the Cor-  
19      poration may by rule provide for a reduction in the costs  
20      charged to respondents who settle or are dismissed from  
21      arbitration prior to the commencement of the hearing.

22   **SEC. 603. INFORMAL DISPUTE RESOLUTION.**

23       (a) The Corporation shall establish expeditious proce-  
24      dures for the informal resolution of disputes regarding the  
25      assessment of costs under this title. The Corporation may,

1 in its sole discretion, postpone the obligation to pay the  
2 disputed assessment, wholly or in part, during the pend-  
3 ency of informal dispute resolution procedures.

4 (b) The Corporation may agree to participate in vol-  
5 untary alternative dispute resolution procedures, including  
6 mediation and arbitration, to resolve disputes regarding  
7 assessments.

8 **SEC. 604. JUDICIAL REVIEW; ENFORCEMENT.**

9 (a) The district courts of the United States shall have  
10 exclusive jurisdiction, without regard to the amount in  
11 controversy or citizenship of the parties, to review any as-  
12 sessment of costs made by the Corporation pursuant to  
13 this title. The reviewing court shall uphold a challenged  
14 assessment unless it determines that that assessment is  
15 arbitrary and capricious or otherwise not in accordance  
16 with law. No action under this subsection may be com-  
17 menced or maintained by any person unless that person  
18 has first (1) exhausted the informal dispute resolution  
19 procedures provided under section 603 and (2) paid to the  
20 Corporation the entire amount assessed to that person by  
21 the Corporation, including the amount in dispute.

22 (b) The Corporation shall have the authority to bring  
23 an action in the district courts of the United States to  
24 enforce any obligation imposed on any person by this title,  
25 and the district courts of the United States shall have ex-

1 exclusive jurisdiction of such actions without regard to the  
2 amount in controversy or citizenship of the parties. The  
3 court shall not entertain any defense other than lack of  
4 jurisdiction in any action by the Corporation to recover  
5 assessments due under this title unless the assessment is  
6 fully paid, with interest, in which case the court shall up-  
7 hold the Corporation's determination if it is not arbitrary  
8 and capricious or otherwise contrary to law. In any action  
9 under this subsection in which the Corporation prevails,  
10 it shall be entitled to costs, including reasonable attorneys'  
11 fees, and interest on any unpaid funds. Interest under this  
12 subsection shall be equal to the rate applicable to under-  
13 paid taxes under 26 U.S.C. § 6621.

14 **SEC. 605. PENALTIES.**

15       If any person required by section 601 to provide in-  
16 formation to the Corporation willfully fails to do so within  
17 the time fixed by the Corporation, the person shall forfeit  
18 to the Corporation the sum of \$50,000, which forfeiture  
19 shall be payable to the Corporation, and shall be recover-  
20 able in a civil suit in the name of the Corporation brought  
21 under section 604(b).

1       **TITLE VII—APPLICABILITY;**  
2       **PENDING CIVIL ACTIONS**

3   **SEC. 701. APPLICABILITY.**

4       Subject to section 702, upon the date of enactment  
5 the Act shall apply to any civil action asserting an asbestos  
6 claim that has not resulted in a final, non-appealable judg-  
7 ment.

8   **SEC. 702. PENDING CIVIL ACTIONS.**

9       (a) A certificate of medical eligibility shall not be re-  
10 quired in any civil action asserting an asbestos claim if  
11 (1) that action was pending upon the date of enactment  
12 and (2) a trial commences prior to the operational date.  
13 No release from mediation shall be required in any civil  
14 action asserting an asbestos claim if that action was pend-  
15 ing on the date of enactment, whether or not trial com-  
16 mences prior to the operational date.

17       (b) Prior to the operational date, a plaintiff in a civil  
18 action asserting an asbestos claim that is pending on the  
19 date of enactment may elect to submit that claim to the  
20 Corporation for a determination of medical eligibility. Any  
21 such election shall be irrevocable.

22       (c) Notwithstanding any other provision of law, the  
23 plaintiff in any civil action asserting an asbestos claim who  
24 has not obtained a certificate of medical eligibility shall  
25 have the burden of establishing the existence of an asbes-

1   tos-related condition that meets the criteria for an eligible  
2   medical category pursuant to sections 201–204.

3       **TITLE VIII—MISCELLANEOUS**  
4               **PROVISIONS**

5   **SEC. 801. DEFINITIONS.**

6       In this Act:

7           (1) **ALTERNATIVE DISPUTE RESOLUTION PROC-**  
8       **ESS.**—The term “alternative dispute resolution proc-

9       ess” means the mediation and voluntary arbitration

10      process established under Title III of this Act.

11          (2) **ASBESTOS.**—The term “asbestos” means

12      any number of naturally occurring silicates with the

13      common properties of great resistance to destruction

14      by physical or chemical means and a fibrous configu-

15      ration, including asbestiform varieties of chrysotile,

16      crocidolite, amosite, anthophyllite, tremolite, and ac-

17      tinolite.

18          (3) **ASBESTOS CLAIM.**—The term “asbestos

19      claim” means any claim for damages or other relief,

20      arising out of, based on, or related to the health ef-

21      fects of exposure to asbestos, including any claim for

22      personal injury, death, mental, or emotional injury,

23      risk of disease or other injury, or the costs of med-

24      ical monitoring or surveillance, and including any

25      claim made by or on behalf of any exposed person



1 or any representative, spouse, parent, child, or other  
2 relative of any exposed person.

3 (4) ASBESTOS TRUST.—The term “asbestos  
4 trust” means a court-supervised trust established to  
5 resolve asbestos claims arising directly or indirectly  
6 from exposure to asbestos or asbestos-containing  
7 products, including a trust created pursuant to the  
8 bankruptcy laws of the United States or Rule 23 of  
9 the Federal Rules of Civil Procedure.

10 (5) BASILAR CRACKLES.—The term “basilar  
11 crackles”, sometimes called “rales”, means those  
12 sounds described in American Thoracic Society,  
13 “The Diagnosis of Nonmalignant Diseases Related  
14 to Asbestos”, 134 American Review of Respiratory  
15 Disease 363, 366 (1986).

16 (6) BOARD.—The term “Board” means the  
17 Board of Directors of the Asbestos Resolution Cor-  
18 poration.

19 (7) BOARD-CERTIFIED INTERNIST.—The term  
20 “Board-certified internist” means a physician who is  
21 currently certified by the American Board of Inter-  
22 nal Medicine in internal medicine.

23 (8) BOARD-CERTIFIED ONCOLOGIST.—The term  
24 “Board-certified oncologist” means a physician who  
25 is currently certified by the American Board of In-

1        ternal Medicine in the subspecialty of medical oncol-  
2        ogy.

3            (9)    BOARD-CERTIFIED    PATHOLOGIST.—The  
4        term “Board-certified pathologist” means a physi-  
5        cian who currently holds primary certification in  
6        anatomic pathology, or combined anatomic and clin-  
7        ical pathology, from the American Board of Pathol-  
8        ogy.

9            (10)    BOARD-CERTIFIED    PULMONARY    SPE-  
10        CIALIST.—The term “Board-certified pulmonary spe-  
11        cialist” means a physician who is currently certified  
12        by the American Board of Internal Medicine in the  
13        subspecialty of pulmonary disease.

14            (11)    BOARD-CERTIFIED    RADIOLOGIST.—The  
15        term “Board-certified radiologist” means a physician  
16        who is currently certified by the American Board of  
17        Radiology.

18            (12) BYLAWS.—The term “bylaws” means the  
19        code or codes of rules adopted for the regulation or  
20        management of the affairs of the Corporation. By-  
21        laws shall be consistent with the requirements of this  
22        Act and, to the extent consistent with this Act, with  
23        the requirements of the District of Columbia Non-  
24        profit Corporation Act, (D.C. Code §§ 29–501 et  
25        seq.)

1           (13) CANCER.—The term “cancer” means any  
2           of various malignant neoplasms marked by the pro-  
3           liferation of anaplastic cells that tend to invade sur-  
4           rounding tissue and metastasize to new body sites  
5           and the pathological condition characterized by such  
6           growths.

7           (14) CERTIFICATE OF MEDICAL ELIGIBILITY.—  
8           The term “certificate of medical eligibility” means a  
9           certificate issued by the Corporation to a claimant  
10          pursuant to this Act certifying that an exposed per-  
11          son meets the requirements of one or more eligible  
12          medical categories (or qualifies as an exceptional  
13          medical claim with respect to an eligible medical cat-  
14          egory).

15          (15) CERTIFIED B-READER.—The term “cer-  
16          tified B-reader” means an individual qualified as a  
17          “final” or “B-reader” under 42 C.F.R. § 37.51(b)  
18          (1997) (and any subsequent revisions thereof) whose  
19          certification is current.

20          (16) CHEST X-RAYS.—The term “chest x-rays”  
21          means chest radiographs taken in four views (Pos-  
22          terior-Anterior, Lateral, and Left and Right Ob-  
23          liques) and graded quality 1 for reading according to  
24          the criteria established by the ILO; except that, in  
25          situations where the claimant is unable to provide

1        quality 1 chest x-rays because of death or because  
2        of an inability to have new chest x-rays taken, chest  
3        x-rays graded quality 2 will be acceptable.

4            (17) CIVIL ACTION.—The term “civil action”  
5        means any action, lawsuit, or proceeding in any  
6        state, federal, or tribal court, but does not include  
7        (a) criminal action, (b) an action relating to state or  
8        federal workers’ compensation laws, or (c) a pro-  
9        ceeding for judicial review of the actions of the Cor-  
10       poration.

11           (18) CLAIMANT.—The term “claimant” means  
12        any exposed person or his legal representative, and  
13        any parent, child, or other relative of an exposed  
14        person, or their legal representatives, who asserts an  
15        asbestos claim.

16           (19) CLINICAL EVIDENCE OF ASBESTOSIS.—  
17        The term “clinical evidence of asbestosis” means a  
18        diagnosis of pulmonary asbestosis by a Board-cer-  
19        tified internist or Board-certified pulmonary spe-  
20        cialist based on the following minimum objective cri-  
21        teria:

22            (A) Chest x-rays which, in the opinion of  
23            a certified B-reader, show small irregular opac-  
24            ities of ILO Grade 1/0 and pulmonary function

1 testing and physical examination that show ei-  
2 ther:

3 (i)  $FVC < 80\%$  of predicted value  
4 with  $FEV_1/FVC \geq 75\%$  (actual value); or

5 (ii)  $TLC < 80\%$  of predicted value,  
6 with either  $DLCO \leq 76\%$  of predicted  
7 value or bilateral basilar crackles, and also  
8 the absence of any probable explanation  
9 for this  $DLCO$  result or crackles finding  
10 other than the presence of lung disease.

11 (B) Chest x-rays which, in the opinion of  
12 a certified B-reader, show small irregular opac-  
13 ities of ILO Grad 1/1 or greater; and pul-  
14 monary function testing that show either:

15 (i)  $FVC < 80\%$  of predicted value  
16 with  $FEV_1/FVC \geq 72\%$  (actual value) or,  
17 if the individual tested is at least 68 years  
18 old at the time of the testing, with  $FEV_1/$   
19  $FVC \geq 65\%$  (actual value); or

20 (ii)  $TLC < 80\%$  of predicted value.

21 (20) COMPENSATORY DAMAGES.—The term  
22 “compensatory damages” means damages awarded  
23 for economic and non-economic loss.

1           (21) CORPORATION.—The term “Corporation”  
2       means the Asbestos Resolution Corporation estab-  
3       lished in section 101.

4           (22) DEFENDANT.—The term “defendant”  
5       means any party in a civil action that is alleged to  
6       be legally responsible for the claimant’s injury.

7           (23) DLCO.—The term “DLCO” means dif-  
8       fusing capacity of the lung (carbon monoxide), which  
9       is a measure of the volume of carbon monoxide  
10      transferred from the alveoli to blood in the pul-  
11      monary capillaries for each unit of driving pressure  
12      of the carbon monoxide.

13          (24) ECONOMIC LOSS.—The term “economic  
14      loss” means any pecuniary loss resulting from harm  
15      (including the loss of earnings or other benefits re-  
16      lated to employment, medical expense loss, replace-  
17      ment service loss, loss due to death, burial costs, and  
18      loss of business or employment opportunities) to the  
19      extent that recovery for such loss is allowed under  
20      applicable law.

21          (25) ELIGIBLE MEDICAL CATEGORY.—The term  
22      “eligible medical category” means mesothelioma,  
23      lung cancer, other cancer, and non-malignant condi-  
24      tions.

1           (26) EVIDENCE OF BILATERAL PLEURAL  
2 THICKENING WITH IMPAIRMENT.—The term “evi-  
3 dence of bilateral pleural thickening with impair-  
4 ment” means a diagnosis of bilateral pleural thick-  
5 ening with impairment by a Board-certified internist  
6 or Board-certified pulmonary specialist based on the  
7 following minimum objective criteria:

8           (A) Chest x-rays which, in the opinion of  
9 a certified B-reader, show bilateral pleural  
10 thickening of ILO Grad B2, and which includes  
11 blunting of at least one costophrenic angle and  
12 is not explained by any other condition in the  
13 subject’s history; and pulmonary function test-  
14 ing that shows:

15           (i) If TLC is available,  $TLC < 75\%$   
16 of predicted value; or

17           (ii) If TLC is not available, VC or  
18  $FVC < 75\%$  of predicted value with  
19  $FEV_1/FVC \geq 75\%$  (actual value); and in  
20 either case

21           (iii) a statement by the Board-cer-  
22 tified internist or Board-certified pul-  
23 monary specialist that the asbestos-related  
24 changes are a substantial contributing fac-

tor in causing the pulmonary function changes.

(B) Chest x-rays which, in the opinion of a certified B-reader, show bilateral pleural thickening of ILO Grade C2 or greater, and which includes the blunting of at least one costophrenic angle and is not explained by any other condition in the subject's history; and pulmonary function testing that shows—

(i)  $FVC < 180\%$  of predicted value with  $FEV_1/FVC \geq 75\%$  (actual value), or, if the individual tested is at least 68 years old at the time of the testing, with  $FEV_1/FVC \geq 65\%$  (actual value); or

(ii)  $TLC < 80\%$  of predicted value; and in either case

(iii) a statement by the Board-certified internist or Board-certified pulmonary specialist that the asbestos-related changes are a substantial contributing factor in causing the pulmonary function changes.

(27) EXCEPTIONAL MEDICAL CLAIM.—The term “exceptional medical claim” means a claim identified as such pursuant to the procedures in section 206.



1           (28) EXPOSED PERSON.—The term “exposed  
2           person” means any person who has been exposed in  
3           any state (or while working aboard a United States  
4           vessel outside the United States) to asbestos or to  
5           asbestos containing products.

6           (29) FEV<sub>1</sub>.—The term “FEV<sub>1</sub>” means forced  
7           expiratory volume (1 second), which is the maximal  
8           volume of air expelled in one second during perform-  
9           ance of the spirometric test for forced vital capacity  
10          (FVC). FEV<sub>1</sub> shall be measured using standard spi-  
11          rometric methods.

12          (30) FINAL CERTIFICATE OF ELIGIBILITY.—  
13          The term “final certificate of eligibility” means a  
14          certificate of eligibility that is not subject to further  
15          review or modification by the Corporation, whether  
16          on reconsideration under section 205 or by action of  
17          an exceptional medical claims panel under section  
18          206.

19          (31) FVC.—The term “FVC” means forced  
20          vital capacity, which is the maximal volume of air  
21          expired with a maximally forced effort from a posi-  
22          tion of maximal inspiration. FVC shall be measured  
23          using standard spirometric methods.

24          (32) GOOD FAITH OFFER OR GOOD FAITH DE-  
25          MAND.—The terms “good faith offer” or “good faith

1 demand” means a settlement offer or demand which  
2 reflects an evaluation of relevant factors of tradi-  
3 tional tort principles of damages.

4 (33) GRACE PERIOD.—The term “grace period”  
5 means the period allowed for voluntary settlements  
6 in section 304.

7 (34) ILO.—The term “ILO” means the Inter-  
8 national Labour Office.

9 (35) ILO GRADE.—The term “ILO grade”  
10 means the radiological ratings for the presence of  
11 lung changes by chest x-ray as established from time  
12 to time by the ILO.

13 (36) LATENCY PERIOD.—The term “latency pe-  
14 riod” means the period from the date of the exposed  
15 person’s first significant exposure to asbestos or an  
16 asbestos-containing product to the date of mani-  
17 festation of the condition claimed.

18 (37) MANIFESTATION.—The term “manifesta-  
19 tion” means either the date of the actual diagnosis  
20 of the condition claimed, or the date upon which the  
21 clinical records and available tests indicate that the  
22 condition could reasonably have been diagnosed by a  
23 competent physician.

24 (38) MEDICAL ADVISORY BOARD.—The term  
25 “medical advisory board” means the board estab-

1 lished under section 105 to provide medical advice to  
2 the board of directors of the Corporation.

3 (39) MESOTHELIOMA.—The term “mesothe-  
4 lioma” means a malignant tumor of the mesothelial  
5 tissue.

6 (40) MOTIONS OFFICER.—The term “motions  
7 officer” means an official of the Corporation respon-  
8 sible for resolving procedural and discovery disputes  
9 during the alternative dispute resolution process in  
10 the absence of an arbitrator. Motions officers shall  
11 be members in good standing of the bar of a State.

12 (41) NON-ECONOMIC LOSS.—The term “non-  
13 economic loss” means subjective, nonmonetary loss  
14 resulting from harm, including pain, suffering, in-  
15 convenience, mental suffering, emotional distress,  
16 loss of society and companionship, loss of consor-  
17 tium, injury to reputation, and humiliation.

18 (42) OCCUPATIONAL HISTORY.—The term “oc-  
19 cupational history” means a listing of all employ-  
20 ment positions, providing for each the dates and  
21 place of employment, the employer, and a descrip-  
22 tion of job responsibilities and activities.

23 (43) OPERATIONAL DATE.—The term “oper-  
24 ational date” means the earlier of (i) the date on  
25 which the Board certifies that the Corporation is

1 operational, or (ii) the first business day following  
2 the seventh month after the date on which the  
3 Board is authorized under section 103(i) to take any  
4 action authorized by law.

5 (44) PATHOLOGICAL EVIDENCE OF ASBES-  
6 TOSIS.—The term “pathological evidence of asbes-  
7 tosis” means diagnosis of pulmonary asbestosis by a  
8 Board-certified pathologist based on a finding that  
9 more than one representative section of lung tissue  
10 otherwise uninvolved with any other process (e.g.,  
11 cancer or emphysema) demonstrates a pattern of  
12 peribronchiolar or parenchymal scarring in the pres-  
13 ence of characteristic asbestos bodies, and also that  
14 there is no other more likely explanation for the  
15 presence of the fibrosis.

16 (45) PERSON.—The term “person” means an  
17 individual, trust, firm, corporation, association, part-  
18 nership, joint venture, the United States, and any  
19 state or political subdivisions thereof. The term does  
20 not include an asbestos trust in existence as of the  
21 date of enactment unless the trust elects to be cov-  
22 ered by this Act under section 804.

23 (46) PHYSICIAN.—The term “physician” means  
24 a medical doctor currently licensed to practice medi-  
25 cine in any state who has not, within the five-year

1 period prior to the date of enactment of the Act,  
2 spent more than one half of his or her professional  
3 time, or derived more than one-half of his or her  
4 professional income, either annually or in total, ei-  
5 ther reviewing or testifying in any forum on medical-  
6 legal issues related to asbestos.

7 (47) PREDICTED VALUE.—The term “predicted  
8 value” for spirometry and lung volumes shall be the  
9 relevant value published by Morris, Clinical Pul-  
10 monary Function Testing, 2d Edition, Inter-  
11 mountain Thoracic Society (1984). “Predicted  
12 Value” for diffusing capacity shall be the relevant  
13 value published by Miller, et al., “Single Breath Dif-  
14 fusing Capacity in a Representative Sample of the  
15 Population of Michigan, a Large Industrial State,”  
16 127 American Review of Respiratory Disease, 270–  
17 77 (1983). Predicted value in all pulmonary function  
18 tests shall be corrected for race, ethnic origin, and  
19 other relevant factors.

20 (48) PULMONARY FUNCTION TESTING.—The  
21 term “pulmonary function testing” means  
22 spirometry, lung volume, and diffusing capacity  
23 (“DLCO”) testing. All spirometry shall use standard  
24 spirometric methods. Pulmonary function testing  
25 other than spirometry shall use methods, quality cri-

1       teria, and standards approved by the Board, upon  
2       the recommendation of the Medical Advisory Board.  
3       Such methods, quality criteria, and standards shall  
4       be generally recognized by authoritative professional  
5       bodies as appropriate, giving due consideration to re-  
6       liability where obstructive lung disease may be  
7       present. All back-up data (including flow volume  
8       loops, spirographs, and other tracings), necessary to  
9       ensure compliance with the methods, quality criteria,  
10      and standards approved by the Board shall be sub-  
11      mitted to the Corporation along with the results of  
12      such tests.

13           (49) PUNITIVE DAMAGES.—The term “punitive  
14      damages” means damages awarded against any per-  
15      son to punish or deter such person, or others, from  
16      engaging in similar behavior in the future.

17           (50) RESPONDENT.—The term “respondent”  
18      means any person who is or may be responsible for  
19      a claimant’s asbestos-related condition and who is so  
20      notified by the Corporation under section 303 or  
21      who is added to an arbitration proceeding under sec-  
22      tion 306(a). The terms does not include an asbestos  
23      trust in existence as of the date of enactment of this  
24      Act unless the trust elects to be covered by this Act  
25      under section 804.

1           (51) STANDARD SPIROMETRIC METHODS.—The  
2       term “standard spirometric methods” means spiro-  
3       metric methods and equipment that substantially  
4       conform to American Thoracic Society standards for  
5       technical quality and instrumentation, as set forth in  
6       20 C.F.R. § 718.103(1997) and Appendix B thereto  
7       or in guidelines established by the American Tho-  
8       racic Society, as set forth in “Standardization of  
9       Spirometry—1994 Update”, 152 American Review  
10      of Respiratory Disease 1107–36 (1995) and any re-  
11      visions thereof. Each subject must be tested with  
12      and without inhaled bronchodilators, with best val-  
13      ues taken. All back-up data pertaining to spirometric  
14      testing of an exposed person (including all flow vol-  
15      ume loops, spirographs, and any other tracings)  
16      shall be submitted to the Corporation to ensure that  
17      these quality criteria and standards have been satis-  
18      fied.

19           (52) STATE.—The term “state” means any  
20      state of the United States, the District of Columbia,  
21      Commonwealth of Puerto Rico, the Northern Mar-  
22      iana Islands, the Virgin Islands, Guam, American  
23      Samoa, and any other territory or possession of the  
24      United States or any political subdivision of any of  
25      the foregoing.

1           (53) TLC.—The term “TLC” means total lung  
2           capacity, which is the volume of air in the lung after  
3           maximal inspiration.

4           (54) WORKERS’ COMPENSATION LAW.—The  
5           term “workers’ compensation law” means a law re-  
6           specting a program administered by a state or the  
7           United States to provide benefits, funded by a re-  
8           sponsible employer or its insurance carrier, for occu-  
9           pational diseases or injuries or for disability or death  
10          caused by occupational diseases or injuries. The  
11          term includes the Longshore and Harbor Workers’  
12          Compensation Act, (33 U.S.C. §§ 901–944, 948–  
13          950), but does not include the Federal Employers’  
14          Liability Act, (45 U.S.C. § 51–60).

15 **SEC. 802. APPLICABILITY OF OTHER FEDERAL LAWS.**

16          (a) Nothing in this Act shall be construed to make  
17          any director, officer or employee of the Corporation, an  
18          officer or employee of the U.S. Government for purposes  
19          of Title 5, United States Code. Neither the Corporation  
20          nor any director, officer, or employee of the Corporation  
21          shall be subject to the provisions of 31 U.S.C. § 1341(a).

22          (b) To the extent consistent with the provisions of  
23          this Act, the Corporation shall be subject to 5 U.S.C.  
24          §§ 553, 555, and 706 and 5 U.S.C. § 552a.



1 (c) In order to preserve the integrity of the settlement  
2 process in the resolution of asbestos claims, the Corpora-  
3 tion shall exempt from disclosure under 5 U.S.C.  
4 § 552(b)(3) information or documents that contain the re-  
5 sults of settlements or settlement averages, individual  
6 party or attorney names, medical records, and relating  
7 data collected for the purpose of resolving individual  
8 claims.

9 (d) The Corporation shall be exempt from: 5 U.S.C.  
10 § 552b, 5 U.S.C. §§ 5101–5115, 5331–5338, 5 U.S.C.  
11 § 504, 5 U.S.C. App. (Ethics in Government Act), 28  
12 U.S.C. § 2412, 28 U.S.C. § 2672, 41 U.S.C. §§ 251–260  
13 and 44 U.S.C. § 3501 et seq.

14 **SEC. 803. OBLIGATIONS OF THE CORPORATION NOT OBLI-**  
15 **GATIONS OF THE UNITED STATES.**

16 Obligations or liabilities of the Corporation shall not  
17 be obligations or liabilities of the United States. No action  
18 may be maintained against the United States to enforce  
19 any obligation or liability of the Corporation.

20 **SEC. 804. APPLICATION TO EXISTING ASBESTOS TRUSTS.**

21 (a) This Act shall not apply to any asbestos trust in  
22 existence as of the date of enactment of this Act, except  
23 as provided in subsection (b).

24 (b) An asbestos trust may elect to be subject to the  
25 Act by providing written notice of such election to the Cor-

1 poration, in which case the trust will have the same rights  
2 and responsibilities under the Act as any person who is  
3 not a trust. A valid election under this subsection shall  
4 be irrevocable.

5 **SEC. 805. APPLICATION TO CERTAIN SETTLEMENTS.**

6 This Act shall not apply to any settlement agreement  
7 or related agreement concerning asbestos claims entered  
8 into by claimants, defendants, or their counsel.

9 **SEC. 806. SEVERABILITY.**

10 If any provision of this Act or the application of such  
11 provision to any person or circumstance is held invalid,  
12 it is the intent of Congress that the remainder of this Act  
13 and application of such provision to other persons or cir-  
14 cumstances shall not be affected thereby.

